

Chapter 2: RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS

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Chapter 2: RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS

SUMMARY: These rules govern various administrative activities of the Department of Environmental Protection. Included within these rules are sections which apply to advisory opinions, license application requirements, application fees, public notice, public access to information, processing times, license transfers, and appeals to the Board of Environmental Protection.

1. **Definitions.** The following terms, as used in this Chapter, have the following meanings unless the context indicates otherwise:
- A. **Abutter.** "Abutter" for the purposes of the notice provisions of this rule, means any person who owns property that is both (1) adjoining and (2) within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way.
 - B. **Aggrieved person.** "Aggrieved person" means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision.
 - C. **Amendment application.** "Amendment application" means any application to modify a license previously granted by the Department, except for minor revisions.
 - D. **Board.** "Board" means the Board of Environmental Protection.
 - E. **Chair.** "Chair" means the Chair of the Board of Environmental Protection, or his or her designee.
 - F. **Commissioner.** "Commissioner" means Commissioner of the Department of Environmental Protection, or his or her designee.
 - G. **Department.** "Department" means the Department of Environmental Protection, including the Board and the Commissioner.
 - H. **Department staff.** "Department staff" means all staff, except staff to the Board.
 - I. **Interested person.** "Interested Person" means any person who submits written comments on an application or who requests, in writing, receipt of materials related to a particular application.
 - J. **License.** "License" means any license, license amendment, license renewal, transfer, permit, variance, approval or certification issued by the Department.
 - K. **Licensee.** "Licensee" means the person named on the license.

- L. Minor revision.** "Minor Revision" means any proposal to modify a license previously granted by the Department, where the modification significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. This term may be further defined by the Board through bureau specific rules.
- M. Party.** "Party" means:
- (1) The specific person whose legal rights, duties or privileges are being determined in the proceeding; and
 - (2) Any person participating in an adjudicatory proceeding pursuant to 5 M.R.S.A. section 9054(1) or (2).
- N. Permit by rule.** "Permit by Rule" means any license or notification that is designated by the Board through rule under the authority of 38 M.R.S.A. section 344(7).
- O. Person.** "Person" means any individual; partnership; corporation; Federal, state or local government entity; association; or public or private organization of any character; except the agency conducting the proceeding.
- P. Processing time.** "Processing Time" means the time established by the Department to process an application, as published pursuant to 38 M.R.S.A. section 344-B(1) or otherwise provided by law.
- Q. Transfer of ownership.** "Transfer of Ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock, or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns the property, facility or structure remains the same.

2. Scope of rules.

- A. General scope.** These rules apply to processing of applications made to the Department for new, renewed, amended or transferred licenses, and other determinations on specific matters made by the Department, except as noted in section 2(B) of this rule. These rules apply in the absence of procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control.
- B. Exceptions.** Groundwater oil clean up fund claims, applications for one-time disposal of special waste; asbestos or lead abatement licenses and certifications; third party damage claims; license or permit by rule; registrations or notifications; waste transporter licenses; reimbursement claims; closure plans; public benefit determinations; occupational licenses and minor revisions are not subject to this chapter, unless specifically included.
- C. Effect.** These rules apply to all applications accepted as complete, or requests for review of Department decisions, filed on or after the effective date of these rules, or any amendments to these rules.

3. **Filing of Submissions and Computation of Time.** An application, appeal or petition must include a designated contact person to whom all orders, notices and correspondence regarding the application, appeal or petition must be sent.

Whenever a Department rule or order requires or allows the filing of any paper or submission, that filing is complete:

- A. **On the Department.** Upon the Department, when the Department receives the submission by the close of business (5:00 p.m., as determined by the received time stamp on the received document, fax or electronic mail) by:
- (1) mail,
 - (2) in-hand delivery,
 - (3) fax, if followed by receipt of an original document within 5 working days, or
 - (4) electronic-mail, if the submission is related to an application or a draft license and it is sent to the electronic-mail address specified in the public notice of Intent to File the application or the correspondence accompanying the draft license.

The risk of using less reliable delivery methods such as fax or e-mail is on the sender. Such submissions not received by the Department by a prescribed deadline will be deemed untimely.

- B. **On others.** Upon the applicant or any other person, when the submission is:

- (1) mailed to the recipient or the recipient's attorney;
- (2) delivered in-hand to the recipient or to the recipient's office;
- (3) faxed to the recipient; or
- (4) delivered to the recipient by electronic mail.

The risk of using less reliable delivery methods such as fax or e-mail is on the sender. Such submissions not received by the recipient by a prescribed deadline will be deemed untimely.

For the purpose of this rule, "days" are calendar days unless otherwise designated. "Working days" excludes Saturdays, Sundays, state holidays and any other day state offices are not open for business. In computing any period of time prescribed or allowed by these rules, the first day of that period is not included. The last day of the period is included unless it is not a working day, in which event the period runs until the end of the next day which is a working day. If a person is required to take some action within a prescribed period after filing of notice or other paper and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

- 4. Advisory rulings.** Any person may by petition request that the Department issue an advisory ruling with respect to the applicability of any statute or rule administered by the Department to that person's property or to acts or events in which that person has a substantial interest. A request for an advisory ruling must be based on existing facts and not on hypothetical situations.

A. Petition. A petition for an advisory ruling must be in writing and must include:

- (1) The name, address, and telephone number of the person requesting the ruling;
- (2) The statute or rule of which an interpretation is requested;
- (3) A clear and definite statement of the ruling requested and the issues presented by the request;
- (4) All facts that are necessary to issue the advisory ruling;
- (5) All assumptions that relate to the advisory ruling;
- (6) Facts that establish the substantial interest of the requesting person in the acts, events or property with respect to which the ruling is requested; and
- (7) A statement indicating whether, to the petitioner's knowledge, the issue upon which an advisory ruling is sought is the subject of a pending Department licensing or enforcement proceeding or a prior advisory ruling.

The written petition must be clearly captioned as "REQUEST FOR ADVISORY RULING" and directed to the bureau responsible for administering the statute or rule in question.

B. Department action.

- (1) Issuance of advisory rulings by the Department is discretionary and will be decided on a case-by-case basis.

- (2) As expeditiously as possible, but no later than sixty (60) days from the filing of a petition, the Bureau Director or his or her designee shall either issue a written advisory ruling or notify the petitioner of the reasons that an advisory ruling will not be rendered.
 - C. **Advisory ruling not binding.** No advisory ruling constitutes *res judicata* or legal precedent with respect to the issues raised before the Department. Advisory rulings are not binding on the Department in any subsequent enforcement action; however, justifiable reliance on the ruling is considered in mitigation of any penalty sought to be assessed. Advisory rulings are not appealable to the Board and are not final agency action.
 - D. **Informal staff opinions.** Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding.
5. **Inspection.** Authorized representatives of the Department may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity and conduct tests as appropriate to verify any information contained in an application or to determine compliance with any laws administered by the Department or the terms and conditions of any license.
6. **Public access to information.**
- A. **Confidential.** Except as made confidential by law, the Commissioner shall make all records in the Department's possession available to the public for inspection and copying.
 - B. **Records that are confidential.** The Commissioner shall keep confidential only those records that are confidential pursuant to the Freedom of Access Law, 1 M.R.S.A. Sections 401-410.
 - C. **Inspection of public records.** At reasonable times and locations the Commissioner shall provide facilities for the inspection of public records.

- D. Costs for copies must reflect the costs to the Department.** Payment must be made to the Maine Environmental Protection Fund and must be paid prior to the Commissioner releasing the copies, unless the Commissioner elects to bill the person requesting the copies.

7. Public hearings.

- A. Request for public hearing on an application.** The Department shall provide an opportunity for the applicant, or any interested agency, person or group of persons, to request a public hearing with respect to any application. A request for a public hearing on an application must be received by the Department, in writing, no later than 20 days after the application is accepted as complete for processing. The request must indicate the interest of the person filing such request and specify the reasons why a public hearing is warranted.
- B. Criteria for holding public hearings.** Public hearings are discretionary unless otherwise provided by law. The Commissioner may conduct a public hearing on any application. The Board may conduct a public hearing on any application over which it has assumed jurisdiction or any appeal or petition for reconsideration. The Department will hold public hearings in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a public hearing will assist the decision maker in understanding the evidence. When the Board assumes jurisdiction over an application, it will hold a public hearing unless it votes otherwise at the time it assumes jurisdiction.

NOTE: Maine law requires that a hearing be held, or opportunity for hearing be provided, with regard to the following matters:

- (1) Action to revoke, modify or suspend a license (38 M.R.S.A. Section 341-D(3)) or refusal to renew a license (5 M.R.S.A. Section 10003(1));*
- (2) Establishment of mixing zones for discharges having a waste discharge license pursuant to (38 M.R.S.A. Section 451);*
- (3) Upon the request of any person to whom an order under the Site Location of Development Law has been previously issued without a hearing. (38 M.R.S.A. Section 485-A);*
- (4) Issuance of a draft Title V air emission license (06-096 CMR 140(2)(K)(3)(f)) or granting of a variance from air emission standards (38 M.R.S.A. Section 587);*
- (5) Issuance of certain water level orders (38 M.R.S.A. Section 840);*
- (6) Approval of sanitary districts (38 M.R.S.A. Section 1101(2));*
- (7) Establishment of commercial hazardous waste facilities (38 M.R.S.A. Section 1319-R(3));*

- (8) *New or expanded commercial or state owned solid waste disposal facilities that accept special waste, if requested by a municipal resident or property owner (38 M.R.S.A. Section 1310-S(2)); and*
 - (9) *New mining sites, or new or expanded mine waste units for disposal of mine waste (06-096 CMR 200(22)(D)).*
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C. Conduct of public hearings. Public hearings are held in accordance with the Maine Administrative Procedure Act, Title 5, Chapter 375, Subchapter IV, and the Department's rules governing hearings. The Presiding Officer may determine that all or part of 06-096 CMR 30 does not apply to a public hearing conducted by the Board on an application over which it has assumed jurisdiction. Public hearings must be scheduled at the earliest possible date. When scheduling a public hearing, the Commissioner or Board shall also establish a date by which petitions for intervention must be submitted to the Department.

Nothing in this section prevents the Department from holding public informational meetings on an application. Such meetings are not subject to the procedural requirements of the Maine Administrative Procedures Act or the Department's public hearing rules. The Department shall notify the applicant and interested persons of public informational meetings and public hearings scheduled by the Department.

- 8. **Delegation.** Nothing in these rules prohibits the Board, where appropriate, from delegating authority to the Commissioner. Nor do these rules prohibit the Commissioner, where appropriate, from delegating authority to Department staff.
- 9. **Preliminary Vote.** The Board may take preliminary votes on any matter before it if the Board member making or seconding the motion requests a preliminary vote on the record. A preliminary vote has no effect and may be used by the Board to further its deliberations and formulate a resolution to any matter before it.
- 10. **Pre-application and pre-submission meetings on applications.**

A. Purpose

- (1) **Pre-application meetings.** Pre-application meetings between the applicant and the Department are an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific project and to identify the Department staff member who will serve as Project Manager for the application. The purpose of these meetings is to identify issues, processing times, fees and the types of information and documentation necessary for the Department to properly assess the project. The applicant shall consult the appropriate bureau Permit Assistance Coordinator to determine what information the applicant must provide before or during a pre-application meeting. Any applicant may request a pre-application meeting. The Department shall make a date available for the meeting as expeditiously as possible, but no later than 30 days from receipt of a written request and receipt of all information required for a pre-application meeting by

the bureau. The Department shall prepare a written summary of all pre-application meetings.

- (2) Pre-submission meetings. A pre-submission meeting between the applicant and the Department occurs after the applicant has finished preparing the application for submission. The meeting is an opportunity to review the assembled application to ensure that the necessary information has been included prior to filing the application with the Department. An applicant may request a pre-submission meeting by contacting the Project Manager, or the Permit Assistance Coordinator for the bureau if no Project Manager has been identified. The Department shall make a date available for the meeting as expeditiously as possible, but no later than 20 days from receipt of a written request.

B. Pre-application and public informational meetings required. A Pre-application meeting is required prior to submission to or acceptance by the Department of an application for the following:

- (1) New Site Location of Development license (38 M.R.S.A Sections 481, *et seq.*);
- (2) Natural Resources Protection Act Tier 3 wetland permit; wetland projects requiring compensation; construction of expansions or new buildings on frontal dunes; dredging projects greater than 50,000 cubic yards; or new crossings of Outstanding River Segments as defined by 38 M.R.S.A. §480-P;
- (3) Air emissions license for major modification or new major source, as defined in 06-096 CMR 100.42 and 43.
- (4) New wastewater discharge license for a discharge greater than 25,000 gallons per day (38 M.R.S.A. Sections 413, *et seq.*);
- (5) New or expanded solid waste disposal facility license (38 M.R.S.A. Sections 1310-N, *et seq.*);
- (6) New or expanded hazardous waste facility, waste oil facility, or biomedical waste facility license but not abbreviated licenses (38 M.R.S.A. sections 1319-O, *et seq.*); or
- (7) Projects requiring new or amended licenses involving more than two bureaus.

An applicant with an application that requires a pre-application meeting pursuant to this section shall hold a public informational meeting in accordance with section 13 of this rule prior to filing the application.

- C. Pre-submission meeting required.** A pre-submission meeting is required prior to submission to or acceptance by the Department of an application for the following:
- (1) Any application for which a pre-application meeting was held; or
 - (2) Any application that has been previously rejected pursuant to section 11(B) of this rule.
- D. Waiver.** The requirement of a pre-application or pre-submission meeting may be waived by written notice from the Department and agreement by the applicant. The Department will agree to waive a pre-application or pre-submission meeting if the Department is satisfied that such a meeting would be of no value in achieving the purposes noted in section 10(A) of this rule. Waiver of a pre-application or pre-submission meeting does not waive the public informational meeting requirement of section 13 of this rule.

11. Application requirements.

- A. General requirements.** Application forms must be developed by the Commissioner and must require such information as the Commissioner deems necessary to make the findings required for each license.

When available, applications must include the “911” address of the project and Global Positioning System (“GPS”) reference data. All GPS data must be in the form of Universal Transverse Mercator (“UTM”) North American Datum of 1983 (“NAD83”) coordinates of the proposed activity. Appropriate bureaus should be contacted to determine specific requirements for location and level of accuracy for GPS data.

An application from a corporation must be submitted in the corporation’s registered corporate name, and must include either a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

Applications must be filed in care of the appropriate bureau, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333, or other office as provided by the Department.

- B. Acceptance of application.** The Commissioner shall, within 15 working days of receipt of an application by the Department, send written notice to the applicant that contains the date the application was accepted as complete for processing, or return the application and specify in writing the reasons it was returned. An applicant whose application has been rejected shall attend a pre-submission meeting in accordance with section 10(C) of this rule before resubmitting an application for the same project or activity. If the Commissioner does not mail notice to the applicant of acceptance or rejection of the application within 15 working days, the application is deemed accepted as complete for processing on the 16th working day.

A determination that an application is accepted as complete for processing is based on staff's determination that the application fee has been paid pursuant to section 12 of this rule and that the application form is properly filled out and information is provided for each of the items required by the forms. It is not a review of the sufficiency of that information and does not preclude the Department from requesting additional information during processing or denying the application for failure to provide information necessary for the processing of that application.

- C. Projects requiring multiple licenses.** Upon filing of an application which involves an activity or project which will require more than one license from the Department, the Board or Commissioner may require the applicant to submit all other required applications before any such application will be accepted as complete for processing. The processing time for all such consolidated applications is the longest processing time associated with any of the applications. An applicant for a project requiring approval from more than two bureaus should contact the Commissioner's Office of Permit Assistance in the early phase of project development to arrange a departmental pre-application meeting and application coordination.
- D. Title, right or interest.** Prior to acceptance of an application for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period. Methods of proving title, right or interest include, but are not limited to, the following:
- (1) When the applicant owns the property, a copy of the deed(s) to the property must be supplied;
 - (2) When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required. If the project requires a submerged lands lease from the State, evidence must be supplied that the lease has been issued, or that an application is pending and likely to be approved.
 - (3) When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed construction and use of the property including closure and post closure care, where required;

- (4) When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Department;
- (5) When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied; or
- (6) When the applicant has a written agreement with the landowner where said agreement permits the applicant to spread waste material that will be agronomically utilized by the landowner, a copy of that agreement must be supplied.

The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest. No fees will be refunded if an application is returned for lack of continued title, right or interest.

- E. Signatory requirement.** Each application submitted to the Department must include the original signature of the applicant, or the applicant's duly authorized officer or agent, under the following certification:

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment."

If an application is signed by an agent, the application must include evidence of the agency signed by the applicant.

- F. Burden of proof.** An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all applications, including renewal, amendment and transfer applications, are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing. For those matters that are not disputed, the applicant shall present sufficient evidence that the licensing criteria are satisfied. For those matters relating to a licensing criteria that are disputed by evidence the Department determines is credible, the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied.
- G. Local filing of applications.** At the time of filing with the Department, a copy of the application, its supporting documents and all amendments to an application must be filed

by the applicant with the appropriate town or city clerk, or, if the project is in an unorganized area, with the county commissioners.

12. Fees.

- A. Fees established** Application fees must be paid by the person submitting an application. Fees are established by the Commissioner, subject to the statutory maximums. The Commissioner shall publish a schedule of fees on November 1 of each year. The schedule of fees is reviewed and republished annually.

NOTE: Contact the Permit Assistance Coordinator for the appropriate Bureau to determine the current fee schedule.

- B. Payment of fees.** Except as otherwise provided by law, all required fees must be paid at the time of filing of the application. Failure to pay all required fees will result in the application not being accepted as complete pursuant to section 11(B) and the application will be returned to the applicant. In the case of residential subdivisions, the processing fees must be paid at the time of filing the application. The license fee for residential subdivisions is the fee in effect at the time of issuance, and must be paid prior to issuance of the license.
- C. Fee refunds.** If an application is withdrawn by the applicant or denied by the Department, the licensing fee must be refunded as provided herein. If an application is withdrawn within 30 days, half of the processing or application fee must be refunded for a hazardous waste, biomedical waste or waste oil facility, or mining application; all of the processing fee must be refunded for all other applications. If an application is withdrawn after 30 days of filing, the processing or application fee will not be refunded.
- D. Amendment and renewal fees.** The fee for amendments is one half the processing fee plus one half the licensing fee. The fee for renewals is one half the processing fee plus the full licensing fee.
- E. Air licensing fees.** In the case of air emission licenses, an annual fee based on the licensed allowable tonnage of air emissions is due on submission of a license application. An annual fee is due on the anniversary date of the license, based on the tonnage of licensed air emissions. There is no additional fee for renewals, transfers or amendments.

- F. Water licensing fees.** Water licensing fees are assessed based on the quantity and nature of the pollutants being discharged. Fees are due annually on the anniversary date of the license. Except for overboard discharge transfers, there are no additional fees for license transfers, renewals or amendments.
- G. Proration of fees.** License fees for licenses issued for a period less than the full term as allowed by statute or rule are prorated for the actual term of the license.

13. Public informational meeting requirement. An applicant intending to file an application that requires a pre-application meeting pursuant to section 10(B) of this rule must hold a public informational meeting prior to filing that application. The purpose of the meeting is for the applicant to inform the public of the project and its anticipated environmental impacts, and to educate the public about the opportunities for public comment to the Department during the application process. At least 10 days prior to the public informational meeting, notice of the informational meeting must be sent by certified mail or certificate of mailing to abutters and to the municipal office of the municipality(ies) where the project is located. At least 7 days prior to the informational meeting, notice must also be published once in a newspaper of general circulation in the area where the project is located. The notice must contain at least the following information:

- A.** Name, address and telephone number of the applicant;
- B.** Citation of the statutes or rules under which the application will be processed;
- C.** Location and summary description of the activity;
- D.** The date, time and place of the public informational meeting; and
- E.** That a purpose of the meeting is for the applicant to seek public comment on the project.

At the meeting, the applicant or its designee shall present a summary of the project; provide clear and concise written information that details the expected environmental impacts of the project and lists the state, local and federal licenses necessary for the project; and provide adequate opportunity for public questions. In addition, a fact sheet obtained from the Department explaining public participation in the licensing process should be made available at the meeting by the applicant.

The applicant must submit a signed certification attesting that a public informational meeting was noticed and held in accordance with this section. The submission must include an estimate of the number of attendees and a narrative responsive to any significant issues relevant to a licensing criteria that are raised at the meeting. The certification must be submitted with any application that requires a pre-application meeting pursuant to section 10(B) of this rule. Certification of a public meeting before a local permitting authority (e.g., planning board or city council) that complied with the notice and substantive requirements of this section is acceptable provided that neither the project nor its anticipated environmental impacts have changed substantially since the date of the public meeting.

14. Public notice of applications.

- A. Content and delivery of the notice.** Unless exempted in section 14(C) of this rule, within 30 days prior to filing, an applicant shall give public notice of Intent to File a new, transfer, renewal or amendment application. A resubmitted application that has been previously returned as incomplete pursuant to section 11(B) of this rule must comply with these requirements if it was not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other means, and to the municipal office of the municipality(ies) where the project is located. The notice must also be published once in a newspaper circulated in the area where the project is located. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided must be submitted with the application. The notice must include the following information:
- (1) Name, address and telephone number of the applicant;
 - (2) Citation of the statutes or rules under which the application is being processed;
 - (3) Location of the activity;
 - (4) Summary of the activity;
 - (5) Anticipated date for filing the application with the Department;
 - (6) A statement that requests for the Board of Environmental Protection to assume jurisdiction over the application or requests for a public hearing on the application must be submitted to the Department in writing no later than 20 days after the application is accepted as complete for processing;
 - (7) A statement providing the local filing location where the application can be examined;
 - (8) A statement that public comments on the application may be provided to the Department, together with the Department contact person and email, if known, and the mailing address of the Department; and
 - (9) Any other information required by substantive rule or law.
- B. Additional Notice.** After an application has been filed, if the Department determines that the applicant submits significant new or additional information or substantially modifies its application at any time after acceptance of the application as complete, the applicant shall provide additional notice to interested persons who have commented on that application. The Department may require additional public notice.

If a modification application filed as a minor revision is determined during processing to constitute an amendment, Notice of Intent to File in accordance with this section must be provided. The Department may not act on the amendment application earlier than 20 days after the public notice is published.

If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14 (A) of this rule.

- C. Exceptions.** An applicant for renewal or transfer of an overboard discharge license is not required to publish public notice but must provide notice to abutters and the municipality at the time an application is filed with the Department in the same manner as described in section 14(A) of this rule. An applicant for tax exemption certification is not required to provide notice to abutters, but must comply with other notice requirements of this section.

NOTE: Some applications may have additional statutory or regulatory notice requirements, e.g., 38 M.R.S.A. §1310-S(1-A) for solid waste disposal facilities; 38 M.R.S.A. §§1319-R & 1319-S for hazardous waste facilities; or 06-096 CMR 140 (2)(D) for a new, renewal or modification of a part 70 air emission license.

- 15. Board notice of applications.** At each Board meeting, the Commissioner shall provide the Board with a dated report listing applications accepted by the Department since the last report. The report must include the name and Department number assigned to the application, the date of acceptance, a brief description of the purpose of the application and any action taken on the application to date. The report does not include Permit by Rule notifications, waste transporter applications or occupational licenses.
- 16. Public comment on applications.** Public comment on applications is allowed during the course of processing the application. Requests for the Board to assume jurisdiction or for a public hearing on the application must be received by the Department, in writing, no later than 20 days after the date the application is accepted as complete for processing. The Department shall maintain a list of interested persons for each application.
- 17. Board assumption of jurisdiction over an application.**
- A.** Any person may request that the Board assume jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing.

- B.** Within 45 days after an application has been accepted as complete for processing, the Commissioner shall make a preliminary determination as to whether the Board should assume jurisdiction of the application. At the next regularly scheduled Board meeting after such a determination is made, the Commissioner shall provide a recommendation to the Board for those applications where the Commissioner recommends that the Board consider jurisdiction. The Commissioner's recommendation must be provided to the applicant, all interested governmental agencies and interested persons prior to consideration of the recommendation by the Board. The Board shall provide an opportunity for the applicant, governmental agencies and interested persons to comment on the Commissioner's recommendation.
- C.** The Board shall assume jurisdiction over the application if it finds that the application:
- (1) involves a policy, rule or law that the Board has not previously interpreted;
 - (2) involves important policy questions that the Board has not resolved;
 - (3) involves important policy questions or interpretations of a rule or law that require reexamination; or
 - (4) is of substantial public interest. An application is of substantial public interest if the project has the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest.
- D.** Nothing in this section may be construed to limit the Board's authority to assume jurisdiction of any application on its own initiative if it finds that one or more of the above criteria are met.

18. Availability of draft license decisions.

- A. Availability of a draft license decision.** When an applicant, intervenor or interested person submits a written request for a draft license decision, that draft decision must be mailed to the requester, and made available at the Augusta Office and appropriate regional offices of the Department, at least 5 working days prior to the Commissioner taking final action on the application if it is a Commissioner's decision, or 15 working days before the Board acts on the application if it is a Board decision. In addition, the Commissioner shall give reasonable notice to the applicant, intervenor, and any interested person of the date final action is expected to be taken by the Commissioner or Board on the draft license decision.
- B. Comments on a draft license decision.** The Department shall accept and may incorporate comments on the draft license decision after it has been made available. If the Commissioner or Board determines that the draft decision should be substantially revised as a result of comments received, a new draft must be made available in accordance with this section. Any person who submits written comments on a draft order will receive a copy of the final order and notice of appeal rights.

19. Decisions.

- A. Permit by Rule.** For a permit by rule designated by the Board under the authority of 38 M.R.S.A. Section 344(7), the Commissioner shall, within 15 working days of receipt of the permit by rule notification, mail notice to the applicant indicating whether the notification meets the permit by rule provisions of the applicable Department rules. If the notice to the applicant is not mailed within 15 working days of receipt, the permit by rule notification is deemed accepted. The rejection of a permit by rule notification is not appealable to the Board and is not final agency action. The acceptance of a permit by rule notification is appealable in accordance with section 24(B) of this rule.
- B. Commissioner decisions.** For an application to be decided by the Commissioner, the Commissioner shall determine whether to hold a public hearing within 45 days after an application is accepted as complete for processing, unless that application is recommended by the Commissioner to the Board pursuant to section 17 of this rule. If the Board votes not to assume jurisdiction over the application pursuant to section 17 of this rule, the Commissioner shall determine whether to hold a public hearing within 10 working days after the date of the Board's decision not to assume jurisdiction.

If no public hearing is to be held, the Commissioner shall, considering the processing time for that application and as expeditiously as possible:

- (1) Approve the application, with or without conditions, and set forth, in writing, findings of fact with sufficient explanation to make interested persons aware of the basis for the determination that the applicant has met the licensing criteria of the appropriate statute or rule; or
- (2) Deny the application and set forth written findings that explain the basis for disapproval.

For those new applications on which a public hearing is held the processing time is stayed from the date of the Commissioner's decision to hold a public hearing. The processing time resumes at the close of the hearing record. The Commissioner shall approve or deny the application in the manner described above within the remaining processing time after the close of the hearing record.

A facsimile of the Commissioner's signature may be used for signing any decision on an application issued by the Commissioner. Each decision must include the date the decision is filed with the Board.

C. Board decisions. For those applications to be decided by the Board, the Board shall, considering a time agreed upon between the Board and the applicant pursuant to 38 M.R.S.A. section 344-B(3)(A)(2), and as expeditiously as possible after voting to assume jurisdiction:

- (1) Approve the application, with or without conditions, and set forth, in writing, findings of fact with a sufficient explanation to make interested persons aware of the basis for the determination that the applicant has met the licensing criteria of the appropriate statute or rule;
- (2) Deny the application and set forth written findings that explain the basis for disapproval; or
- (3) Schedule a hearing on the application.

For those applications on which a public hearing is held before the Board, it shall approve or deny the application in the manner described above, as expeditiously as possible after the hearing record is closed. An evenly divided final vote of the Board has the effect of denying an application unless a majority of Board members subsequently vote at that meeting for another action on the application or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting to deny the application constitute the reasoning for the denial. A Board member who voted in the prevailing side may move at that same meeting to reconsider any action taken by the Board.

D. Effective date of license. Unless otherwise indicated as a condition of the license, a license granted by the Commissioner is effective on the date the Commissioner, or his or her designee, signs the license. A license granted by the Board is effective on the date the Chair signs the license. For the purposes of this Chapter, signature of an order approving or denying an application constitutes a final agency action on that application, subject to administrative appeal or petition for reconsideration as provided in this chapter.

E. Report of decisions. At each Board meeting the Commissioner shall make a report to the Board of the license decisions rendered by the Commissioner. The dated report must contain a summary of all application decisions made by the Commissioner since the last report. For each decision, the report must include the name of the licensee, the nature and location of the project or operation proposed, a brief description of the physical or technical information involved, a statement of the decision rendered, and the date the decision was filed with the Board.

20. Notice of appeal rights. Each license approval or denial, whether issued by the Board or by the Commissioner, must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised. Correspondence notifying the applicant of the Board's or Commissioner's denial must be made by certified mail, return receipt requested.

- 21. License renewals, amendments and transfers.** Applications for renewed, amended or transferred licenses are subject to sections 10 through 20 of this rule and the following requirements:
- A. Renewals.** Licenses may be issued with a condition specifying the time frame within which the license is effective and may include an automatic expiration date if a project is not commenced within the specified time frame. Renewal applications must be submitted prior to the expiration of the existing license. If a renewal application is not timely submitted prior to expiration of the existing license, or is timely submitted but not accepted as complete in accordance with section 11(B) of this rule, the license lapses. If the renewal application is timely submitted prior to the expiration of the license and accepted as complete in accordance with section 11(B) of this rule, the terms and conditions of the existing license remain in effect until the final Department decision on the renewal application becomes effective. Renewal applications to extend the expiration date for projects that have not commenced construction are subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application.
 - B. Amendments.** An amendment application or request for minor revision must be submitted to the Department before undertaking any modification, not exempted from licensing requirements by statute or rule, to a project or activity that is the subject of a Department license. Written approval for the modification must be received before the modification is undertaken. License amendment applications are subject to this Chapter. If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14(A) of this rule.
 - C. Transfers.** Except as provided in this section, every license issued by the Department is non-transferable unless the Department approves the license transfer. The proposed transferee must submit a license transfer application in a form approved by the Department. Both the transferor and the transferee must sign a transfer application, except as provided in section 21(C)(4) of this rule.
 - (1) Except as described below, written consent must be applied for no later than two weeks after any transfer of ownership of property subject to a license. Pending determination on the application for approval of a transfer, the transferee shall abide by all of the conditions of such license, and is jointly or severally liable with the original licensee for any violation of the terms and conditions thereof. Applications for such transfer and the processing thereof are governed by this rule. The transferee shall demonstrate to the Department's satisfaction the technical and financial capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory or regulatory criteria.

- (2) The transfer of a license for a hazardous waste facility, solid waste disposal facility, waste oil facility and biomedical waste facility must be approved prior to the transfer of ownership of the property which is the subject of the license.
- (3) A license pertaining to the occupational activities of persons (e.g. transporter licenses, underground oil storage tank installers, asbestos or lead abatement professionals) is not transferable, unless specifically allowed by statute or rule.
- (4) If the proposed transferee demonstrates that the original licensee no longer has sufficient title, right or interest in the property subject to the license, the Department may allow the transfer application to be processed without the signature of the original licensee.

22. Petition for corrected license. Within 30 days following the effective date of a license, any person, including the Department, may request in writing that the Commissioner or Board issue a corrected license to correct any clerical error or omission, or to clarify the meaning of a license or condition when that clarification explains, but does not modify the substance of that license or condition. The Commissioner or Board shall consider the petition within 30 days of receipt of such request. The filing of a petition under this section does not serve to stay the deadlines for any appeal of a Commissioner or Board Order.

23. Petition for surrender of license. Any licensee may petition the Commissioner to surrender its license if the licensee demonstrates to the Department's satisfaction that it has never used the license for its intended purpose nor begun any of the activities approved under the license and does not intend to do so in the future. The petition must also provide that the licensee waives notice and opportunity for hearing. In addition, an agronomic utilization license may be surrendered at any time in accordance with 38 M.R.S.A. §1310-N(6-D) and a Site Location license for a partially constructed development or a completed mining operation may be rescinded in accordance with 38 M.R.S.A. §489-C.

The Commissioner may require written and photographic documentation, certified statements and sampling analyses, in addition to any other relevant information, as demonstration that the activities described in the license have not been undertaken. The Commissioner shall require that a petition for surrender of a license and written approval of that surrender be recorded in the registry of deeds for any license previously recorded in the registry of deeds.

When the Commissioner approves the surrender, the license is deemed null and void.

24. Board Review of Commissioner decisions. Final license decisions of the Commissioner may be reviewed by or appealed to the Board.

A. Review of a Commissioner's decision on Board's initiative. Within 30 days of the date of the Board's next scheduled meeting following the meeting at which the Board receives written notification of the Commissioner's decision in accordance with section 19(E) of this rule, the Board may vote to review any license decision made by the Commissioner. The procedure for review is the same as for an appeal of a Commissioner's final license decision as described in section 24(B) of this rule.

B. Appeal to the Board of a Commissioner's decision.

- (1) Appeal period. Within 30 days of the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision and must specify whether the appellant desires the Board to hold a public hearing on its appeal. An appellant who does not request a public hearing in the written notice of appeal is considered to have waived any opportunity for a public hearing. The decision to hold a public hearing is discretionary with the Board. If notice to an appellant was required and was given as required, an untimely appeal must be summarily dismissed by the Chair. If the Chair decides an appellant is not an aggrieved person, the Chair may dismiss the appeal. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board.
- (2) Content of appeal. The written notice of the appeal must include, but need not be limited to, evidence demonstrating the appellant's standing as an aggrieved person, the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, and the remedy sought. If the appellant is requesting that supplemental evidence be included in the record and considered by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal. If participants in an appeal agree to use mediation or another form of alternative dispute resolution to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the effort at resolution does not extend beyond six months of filing of the appeal. The Board may accept, reject or modify any mediated settlement that does not include withdrawal of the appeal.

NOTE: The Board encourages the use of mediation and other forms of Alternative Dispute Resolution as means to reach mutually agreeable resolutions.

A Notice of Appeal must be addressed to:

Chair, Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Notices of appeal must be copied to the Commissioner and the licensee. The Board staff shall provide written notice of the appeal to all interested persons.

- (3) Response to appeal if no supplemental evidence is offered by an appellant. If no supplemental evidence is offered by an appellant, the complete response to the appeal must be filed within 30 days of filing of the appeal. If the response to the appeal includes proposed supplemental evidence, the appellant may file a rebuttal addressing only the admissibility of that supplemental evidence within 45 days of the filing of the appeal.
- (4) Response to an appeal if supplemental evidence is offered by an appellant. If supplemental evidence is offered by an appellant, a response to the appeal addressing the admissibility of the proposed supplemental evidence and

providing any proposed supplemental evidence offered by the respondent must be filed within 30 days of filing of the appeal. If the respondent proposes supplemental evidence, the appellant may file a rebuttal addressing only the admissibility of that supplemental evidence within 45 days of the filing of the appeal.

- (5) Supplemental Evidence. The record for appeals heard by the Board is the administrative record prepared by the Department in its review of the application.

If any person seeks to supplement the record, that person shall provide copies of all new documents and, if a public hearing is requested, summaries of all proposed testimony, including the name and qualifications of each witness, to the Board, Department staff and all other persons notified of the appeal. The names and addresses of persons notified of the appeal may be obtained from the Board staff.

The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:

- (a) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or
- (b) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.

The Chair shall rule on the admissibility of supplemental evidence no later than 50 days after the filing of the appeal. All additional argument on the appeal must be filed within 20 days of the Chair's decision. Further evidence may not be provided directly to Board members or distributed at Board meetings or hearings without specific permission of the Chair. The Chair may accept into the record additional evidence and analysis submitted by the Department in response to issues raised on appeal or new evidence offered by the participants.

- (6) Procedure. The procedure for hearings on appeals is governed by section 7(C) of this rule. Appeals decided without a hearing will be considered based on written submissions and oral argument at a regular meeting of the Board as follows:

- (a) the executive analyst for the Board briefly introduces the appeal, indicating the subject matter, the appellant's basis for appeal and the relevant statutes and rules;
- (b) the appellant or its representative makes a presentation discussing objections or challenges to the Commissioner's decision on the application and presenting such additional evidence as the Chair has previously determined to be admissible;
- (c) when the appellant is a person other than the licensee, the licensee is then provided an opportunity to address the issues raised by the appellant;
- (d) at the Chair's discretion, other persons may comment on the appeal;
- (e) Department staff makes a presentation addressing the objections and challenges of the appellant and indicating the Commissioner's recommended disposition of the appeal;
- (f) at the Chair's discretion, the appellant and licensee may be provided with a final opportunity for rebuttal.

The Board, its staff and legal representative may at any time address questions to any person participating in the appeal.

- (7) **Decision.** The Board shall, as expeditiously as possible, affirm all or part, affirm with conditions, order a public hearing to be held as expeditiously as possible, or reverse all or part of the decision of the Commissioner. The Board's decision is based on the administrative record prepared by the Department in its review of the application, any additional evidence admitted into the record pursuant to section 24(B)(4) of this rule and any evidence admitted during the course of a hearing on the appeal. The Board is not bound by the Commissioner's findings of fact or conclusions of law. An evenly divided vote of the Board has the effect of affirming the Commissioner's decision unless a majority of Board members subsequently vote at that meeting for another action on the appeal or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the Commissioner's decision constitute the Board's reasoning in the affirmation.

- 25. Petition for reconsideration of a Board decision.** Within 30 days from the effective date of a Board decision approving or denying a license application, any aggrieved person may petition the Board in writing to request reconsideration of that decision. A person may file only one petition and may not file a petition to reconsider a decision that is an appeal or review of a final license or permit decision made by the Commissioner. The petition must set forth in detail the findings, conclusions or conditions objected to or believed to be in error, the basis for the objections, the nature of any additional evidence to be offered, and the nature of the relief requested, including any request for a public hearing. A petitioner who does not request a public hearing in the petition is considered to have waived any opportunity for a public hearing on the petition. The Board's review shall be limited to those issues raised by the petition. The Board staff shall provide notice of the petition to all interested persons. Petitions for reconsideration must be addressed to the

Chair, and copied to the Commissioner and licensee consistent with appeals in section 24(B)(2) of this rule.

- A. Acceptance of the petition.** Within 30 days following receipt of a petition and after reasonable notice to interested persons, the Board shall vote to grant or dismiss the petition, in whole or in part. An evenly divided vote of the Board has the effect of dismissing the petition unless a majority of Board members subsequently vote at that meeting for another action on the petition or to table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the dismissal constitute the Board's reasoning in the dismissal.
- B. Reconsideration.** If the Board votes to grant all or part of the petition, that action vacates its earlier decision on the issues for which reconsideration is granted and the Board must act anew on all or part of the application, as appropriate. The procedure for presenting the petition and requirements for allowing supplemental evidence are the same as for appeals under section 24(B) of this rule. The Board may decide the matter without hearing after granting the petition or may hold a hearing within 30 days of granting the petition. Any hearing is governed by the Department's hearing rules. With or without hearing, the Board shall vote to approve, approve with conditions or deny the license as to the matters reconsidered, as expeditiously as possible. An evenly divided vote of the Board has the effect of affirming the Board's initial decision as to the matters under reconsideration unless a majority of Board members subsequently vote at that meeting for another action on the petition or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting to affirm the underlying decision constitute the reasoning of the Board in the affirmation.

The running of time for filing a judicial appeal is stayed from the date of timely filing of a petition for reconsideration until the effective date of final action on the petition. On the effective date of the Board's final action on the petition, the full period for filing a judicial appeal commences.

- 26. Judicial review of a Department decision.** Any person may seek judicial review of a final Commissioner or Board decision by filing a petition in Superior Court in accordance with 5 M.R.S.A. Section 11001 *et seq.* and M.R.Civ.P. 80C. The filing of an appeal or a petition for reconsideration to the Board is not a prerequisite for a judicial appeal.

- 27. Revocation, modification, or suspension of licenses.** Any person, including the Commissioner, may petition the Board to revoke, modify or suspend a license. The petition must be addressed to the Chair of the Board and must state which of the criteria listed below is being invoked. It must specifically describe the factual basis for the petition, including what evidence will be offered to support the petition. The petition, once filed, may not be supplemented, except in a public hearing. The petitioner must serve a copy of the petition on the Commissioner and the licensee at the time the petition is filed with the Board.

Unless otherwise provided by law, no later than 30 days following the filing of a petition to revoke, modify or suspend, and after notice and opportunity for the petitioner and the licensee to be heard, the Board shall dismiss the petition or schedule a hearing on the petition. The procedure before the Board is the same as described in section 24(B)(6) of this rule. Any hearing must be scheduled within 45 days of the decision to hold a hearing and must be conducted in accordance with section 7(C) of this rule.

After a hearing, the Board may modify in whole or in part any license, issue an order prescribing necessary corrective action, or refer a license to District Court for revocation or suspension when the Board finds that:

- A.** The licensee has violated any condition of the license;
- B.** The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C.** The licensed activity poses a threat to human health or the environment;
- D.** The license fails to include any standard or limitation legally required on the date of issuance;
- E.** *(Not in use)*
- F.** There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- G.** The licensee has violated any law administered by the Department; or
- H.** The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

STATUTORY AUTHORITY: 38 M.R.S.A., sections 341-D and 343-B.

EFFECTIVE DATE: August 1, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 8, 1996

REPEAL AND REPLACE EFFECTIVE: April 1, 2003, filing 2003-77